

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLANT**

77-1103

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

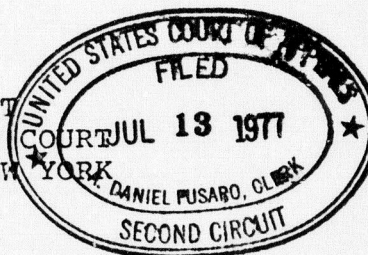
To be argued by
JONATHAN J. SILBERMANN

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UNITED STATES OF AMERICA,
:
Appellee,
:
-against-
:
STEVEN STAVREDES,
:
Appellant.
:
-----X

BS
Docket No. 77-1103

BRIEF FOR APPELLANT
STEVEN STAVREDES

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT
FOR THE EASTERN DISTRICT OF NEW YORK



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Contents

Table of Cases	ii
Question Presented	1
Statement Pursuant to Rule 28(a)(3)	
Preliminary Statement	2
Statement of Facts	2
A. The Indictment	2
B. The Trial and Charge	3
Argument	
The District Court's instructions eliminating criminal intent as an element of the crime charged require reversal	5
Conclusion	11

Table of Cases

<u>Morissette v. United States</u> , 342 U.S. 246 (1952)	5, 6, 9, 10
<u>United States v. Balint</u> , 258 U.S. 250 (1922)	6
<u>United States v. Barash</u> , 412 F.2d 26 (2d Cir.), <u>cert. denied</u> , 396 U.S. 832 (1969)	8, 10
<u>United States v. Behrman</u> , 258 U.S. 280 (1922)	6
<u>United States v. Byrd</u> , 352 F.2d 570 (2d Cir. 1965)	8, 9, 10
<u>United States v. Dibrizzi</u> , 393 F.2d 642 (2d Cir. 1968)	9
<u>United States v. Dotterweich</u> , 320 U.S. 277 (1943)	6, 7
<u>United States v. Irwin</u> , 354 F.2d 192 (2d Cir. 1965), <u>cert. denied</u> , 383 U.S. 967 (1966)	10
<u>United States v. Jacobs</u> , 431 F.2d 254 (2d Cir. 1970), <u>cert. denied</u> , 402 U.S. 950 <u>reh. denied</u> , 403 U.S. 912 (1971)	7
<u>United States v. Murphy</u> , 480 F.2d 256 (1st Cir.), <u>cert. denied</u> , 412 U.S. 928 (1973)	7
<u>United States v. Park</u> , 421 U.S. 658 (1975)	6, 7
<u>United States v. Schabert</u> , 362 F.2d 369 (2d Cir.), <u>cert. denied</u> , 385 U.S. 919 (1966)	10
<u>United States v. Seuss</u> , 474 F.2d 385 (1st Cir.), <u>cert. denied</u> , 412 U.S. 928 (1973)	7, 10
<u>United States v. Umans</u> , 368 F.2d 725 (2d Cir. 1966), <u>cert. dismissed</u> , 389 U.S. 80 (1967)	9
<u>United States v. Winston</u> , Doc. # 76-1436, slip op. 4445 (2d Cir. June 23, 1977)	6, 9, 10

<u>United States v. Worrall</u> , 2 Dall. 344 (1798)	6
--	---

Other Authorities

Christopher & Dunn, Special Fed. Food & Drug Laws

at 97 (CCH 1954)	9
Coke, 3 Inst. 145	6
Miller, <u>Criminal Law</u> , §161 (1934)	6
Sayre, "Public Welfare Offenses," 33 Colum. L. Rev. 55 (1933)	6
3 <u>Wharton's Criminal Law and Procedure</u> , §1380 et seq. (Anderson, ed. 1957)	6
4 Blackstone Comm. 137 (Sharswood 1873)	6
18 U.S.C. §201(g)	7
18 U.S.C. §622	5
21 ALR Fed. 977, Validity, Construction, and Applica- tion of §22 of Fed. Meat Inspection Act (21 U.S.C. §622) (1974)	7
Meat Inspection Act, 21 U.S.C. §601 et seq.	6, 7
21 U.S.C. §622	7
21 U.S.C. §676	7
26 U.S.C. §7214(a)(2)	7, 8
40 (Part 8) Cong. Rec. 7800-7802, 59th Cong., 1st Sess. (1906)	9
40 (Part 9) Cong. Rec. 8720-8729, 59th Cong., 1st Sess. (1906)	9

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-against-

STEVEN STAVREDES,

Appellant.

Docket No. 77-1103

BRIEF FOR APPELLANT
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ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

QUESTION PRESENTED

Whether the District Court's instructions eliminating criminal intent as an element of the crime charged require reversal.

STATEMENT PURSUANT TO RULE 28(a)(3)

Preliminary Statement

This is an appeal from a judgment of the United States District Court for the Eastern District of New York (The Honorable Jack B. Weinstein) rendered on January 28, 1977, after a jury trial, convicting appellant Stavredes of six counts of unlawfully receiving money from a corporation engaged in interstate commerce in violation of 21 U.S.C. 622 (Counts I-VI) and sentencing him to eighteen months' imprisonment on each count, the sentences to run concurrently.

This Court assigned The Legal Aid Society, Federal Defender Services Unit, as counsel on appeal, pursuant to the Criminal Justice Act.

Statement of Facts

A. The Indictment*

On November 7, 1976, an indictment was filed charging appellant Stavredes with six counts of unlawfully receiving money from six different corporations whose activities appellant inspected in the course of his duties as a meat inspector with the United States Department of Agriculture.

*The indictment is "B" to appellant's separate appendix.

B. The Trial and Charge*

Officers of six different wholesale meat packing establishments testified that during portions of 1973 and 1974 appellant Stavredes was the federal meat inspector assigned to inspect their premises and that either they or their employees paid money to appellant weekly (29-32; 54-56; 63-66; 82-84; 102-104; 114; 124-125; 127-128; 131; 135-136; 142-143; 156-158; 160-161; 175-176).**

As part of the defense case, Aldo Baccon and Roy Pitchal, manufacturers of sausage and corned beef, respectively, testified that appellant inspected their businesses and that appellant never solicited nor did they pay him any money (183-184; 188). Further, Pitchal stated that appellant was among a small number of federal inspectors who did not ask him for money (188). Mr. George Puchta, the New York City area supervisor for the Department of Agriculture, testified that appellant Stavredes was considered a good inspector; that appellant received commendations for his work; and that there was no record of appellant having been accused by any meat packers of accepting a gratuity (199; 206).***

*The charge is "C" to appellant's separate appendix.

**Numerals in parenthesis refer to pages of the trial transcript.

***Moreover, it was agreed that two other meat packers would have testified that while appellant Stavredes inspected their premises, he never asked for or received any gratuity (215). On rebuttal, three employees of meat companies located in the Southern District of New York testified that they gave money to appellant Stavredes (243-244; 255; 265-266).

In the course of discussing the charge to the jury, trial counsel argued that a critical element of the crime charged was the criminal intent with which any moneys were received and that this element should be submitted to the jurors for their determination. Defense counsel stated:

I believe that willful knowing intent is very important (277).

The District Court disagreed, stating that the portion of the statute involved "is essentially a supplementation of salary. It doesn't make any difference what the intention was when he took it." (278)

In accordance with this ruling, Judge Weinstein told the jurors that the critical question for their determination was whether appellant "accept[ed] money from the particular corporations or their agents involved in connection with or arising out of his official duties" (321) and that the intent with which the money was received was irrelevant. The judge stated:

The intent with which the money was given or the intent with which it was received is irrelevant in any finding of guilt. It is sufficient if the money was given in connection with the meat inspection program to this defendant as a meat inspector.* (321)

After deliberations, the jury found appellant guilty as charged.

*While the jurors were also told that they had to find that appellant "received the money knowingly and willfully and purposefully and not by any accident, mistake, inadvertence or misunderstanding," (321), the District Court failed to explain further the meaning of these terms.

ARGUMENT

THE DISTRICT COURT'S INSTRUCTIONS
ELIMINATING CRIMINAL INTENT AS AN
ELEMENT OF THE CRIME CHARGED RE-
QUIRE REVERSAL.

Appellant Stavredes was charged with violating that portion of 18 U.S.C. §622 which prohibits Government meat inspectors from receiving "from any...corporation engaged in commerce any... money...given with any purpose or intent whatsoever..." Ruling that criminal intent was not an element of this crime, the District Court instructed the jurors that "the intent with which [the money] was received is irrelevant in any finding of guilt" (321). This decision and instruction, which erroneously eliminated general criminal intent,* allowed the jurors to convict even if they found that appellant had no criminal intent whatsoever. The court's charge, which was contrary to fundamental principles of criminal law, was error, requiring reversal.

The imposition of criminal liability only upon a finding of criminal intent is a traditional requirement.

"The contention that an injury can amount to a crime only when inflicted by intention is no provincial or transient notion. It is as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between

*Of course, the instruction also eliminated any specific criminal intent from the crime charged.

good and evil."

Morrisette v. United States,
342 U.S. 246, 251 (1952).

This Court has only recently reiterated this principle, stating that "mens rea continues to be 'the rule of, rather than the exception to, the principles of Anglo-American criminal jurisprudence.'" United States v. Winston, Doc. No. 76-1436, slip op 4445, 4450 (2d Cir. June 23, 1977). While Congress has validly dispensed with guilty intent in certain crimes denoted as "public welfare offenses," see Sayre, "Public Welfare Offenses," 33 Colum. L. Rev. 55 (1933); United States v. Park, 421 U.S. 658, 670 (1975); United States v. Dotterweich, 320 U.S. 277, 281 (1943); United States v. Balint, 258 U.S. 250, 252 (1922); United States v. Behrman, 258 U.S. 280, 288 (1922), the elimination of this element must be clear. Morrisette v. United States, supra, 342 U.S. at 263. Indeed, the Supreme Court has stated that this has never been done to a crime "taken over from the common law." Morrisette v. United States, supra, 342 U.S. at 265.

Examination of the relevant statute and analogous case law demonstrate that criminal intent is a required element of the crime charged. Although nominally included as part of the Meat Inspection Act, 21 U.S.C. §601 et seq., the statute in question is actually a variant of the common law crime of bribery, prohibiting the giving or receiving of anything of value to a public official, United States v. Worrall, 2 Dall. 344 (1798); 3 Wharton's Criminal Law and Procedure, §1380 et seq. (Anderson, ed. 1957); Miller, Criminal Law, §161 (1934); 4 Blackstone Comm. 137 (Sharswood 1873); Coke, 3 Inst. 145, and is similar to other

federal laws dealing with this offense. See 26 U.S.C. §7214(a)(2), 18 U.S.C. §201(g). These statutes are not regulatory in nature (Compare 21 U.S.C. §676; United States v. Park, supra, 421 U.S. at 668) but are designed to deter government officers from failing to perform their duties impartially and "to discourage one from seeking an advantage by attempting to influence a public official to depart from conduct deemed essential to the public interest."* United States v. Jacobs, 431 F.2d 254 (2d Cir. 1970) cert. denied, 402 U.S. 950, reh. denied 403 U.S. 912 (1971).

While this Court has apparently not construed the pertinent portion of 21 U.S.C. §622,** it has held that criminal intent is

*The Supreme Court has explained that regulatory legislation imposing criminal sanctions -- generally misdemeanors -- are a response to the effects of modern industrialism and the widespread harm of introducing into the stream of commerce adulterated food and drugs. Thus, by flatly prohibiting this conduct in the interest of the larger good of protecting the lives and health of the consuming public, this type of statute eliminates the traditional requirements for criminal liability and "puts the burden of acting at hazard upon a person otherwise innocent but standing in responsible relation to a public danger." United States v. Dotterweich, supra, 320 U.S. at 281; United States v. Park, supra, 421 U.S. at 668. The law prohibiting bribery is obviously not part of the regulatory portion of the legislative scheme.

**The First Circuit dealt with the relevant statutory section in United States v. Seuss, 474 F.2d 385, 388 (1st Cir.), cert. denied, 412 U.S. 928 (1973). Indicating that it "found no judicial construction of this provision..." the court there rejected the contention that the specific intent to alter official conduct was an element of the crime. However, no claim was made that criminal intent had been eliminated from the definition of the crime, and that court did not deal with the question. See also United States v. Murphy, 480 F.2d 256 (1st Cir.), cert. denied, 412 U.S. 928 (1973); 21 ALR Fed.977, Validity, Construction, and Application of §22 of the Federal Meat Inspection Act (21 U.S.C. §622) (1974).

a necessary element of an analogous statute, prohibiting gratuities to Internal Revenue agents (26 U.S.C. §7214(a)(2)).* Thus, in United States v. Byrd, 352 F.2d 570 (2d Cir. 1965), the defendant, an employee of the Internal Revenue Service ("IRS"), was charged with receiving compensation not prescribed by law in violation of 26 U.S.C. §7214(a)(2). There, the district judge told the jurors that they had to find that the defendant was aware that the act was in violation of law and, as here, that the acts were committed knowingly, that is "voluntarily and purposely, not because of a mistake or inadvertence or in good faith." United States v. Byrd, supra, 352 F.2d at 572 n.1. However, the district court failed, as required, to instruct the jury that criminal intent was an element of the offense. See United States v. Barash, 412 F.2d 26, 29 (2d Cir.). cert. denied, 396 U.S. 832 (1969) ("criminal intent is a necessary element for conviction under the gratuity counts..."). Despite the other instructions given, this Court reversed, specifically finding that the "recitation that the indictment alleged that the acts 'performed by this defendant were done unlawfully, knowingly and wilfully' are altogether too tenuous and imprecise to pass as an adequate explanation that criminal intent is an essential element of the offense which must be proven beyond a reasonable doubt." United States v. Byrd, supra, 352 F.2d at

*26 U.S.C. §7214(a)(2) prohibits "receiv[ing] any fee, compensation, or reward, except as by law prescribed, for the performance of any duty."

573; see United States v. Winston, supra, slip op at 4449. As a result, the Court held that the failure to instruct on criminal intent or to relate the definition of the required knowledge to the necessary elements of the crime was plain error. Rule 52(b) Fed. Rules Crim. Proc.; United States v. Byrd, supra, 352 F.2d at 572-574; Cf. United States v. Winston, supra, slip op at 4449, 4455. Compare, United States v. Umans, 368 F.2d 725, 728 (2d Cir. 1966), cert. dismissed, 389 U.S. 80 (1967). See Morissette v. United States, supra, 342 U.S. at 274 ("Where intent of the accused is an ingredient of the crime charged, its existence is a question of fact which must be submitted to the jury."); United States v. Dibrizzi, 393 F.2d 642, 644 (2d Cir. 1968). Thus, the same considerations that required reversal in Byrd necessitate a similar result here.

Moreover, the legislative history of the Meat Inspection Act, which deals generally with the need to regulate conditions in the meat industry, is silent as to the recipient's intent necessary for conviction under the pertinent portion of the bribery statute. See 40 (Part 8) Cong. Rec. 7800-7802, 7850-7851, 59th Cong., 1st Sess. (1906); 40 (Part 9) Cong. Rec. 8720-8729, 59th Cong., 1st Sess. (1906); Christopher and Dunn, Special Federal Food and Drug Laws, at 97 (CCH 1954). While the relevant words of the statute dispense with the usual requirements to the extent of eliminating the need to show that the person or firm who pays money had the specific intent to influence the actions of the Government inspector ("money...given with any

purpose or intent whatsoever"), this silence, given the presumption that criminal intent is a necessary element of all common law crimes, Morissette v. United States, supra, 342 U.S. at 265; United States v. Winston, supra, slip op 4449-4450, reflects Congress' assumption that the general requirement of criminal intent would apply.

Here, not only did Judge Weinstein fail to instruct the jurors that general criminal intent was an element of the crime charged, but he affirmatively and specifically eliminated it by telling them that "the intent with which [the money] was received is irrelevant in any finding of guilt." (321)* Compare United States v. Schabert, 362 F.2d 369, 374 (2d Cir.), cert. denied, 385 U.S. 919 (1966). Since this was error, violative of fundamental principles of criminal law, Cf. United States v. Winston, supra, slip op at 4453; United States v. Barash, supra, 412 F.2d at 29; United States v. Byrd, supra, reversal is required.**

*Here, as in Byrd, supra, 352 F.2d at 573, and Winston, the reminder that the jurors must find that the money was received knowingly, willfully, and purposefully, was insufficient to cure the error.

**United States v. Irwin, 354 F.2d 192 (2d Cir. 1965), cert. denied, 383 U.S. 967 (1966) is distinguishable since it involved a different situation -- the intent required for giving, not receiving a bribe. In any event, the Court in Irwin did not eliminate the requirement of criminal intent from 18 U.S.C. §201(f). Rather, it only held that the specific intent to influence official conduct is not required to convict under that statute and did not reach the question involved here. United States v. Irwin, supra, 354 F.2d at 197; see United States v. Seuss, supra, 474 F.2d at 389.

Conclusion

For the foregoing reasons, the judgment of the District Court must be reversed and a new trial ordered.

Respectfully submitted,

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CERTIFICATE OF SERVICE

July 13, 1977

I hereby certify that a copy of this brief and appendix has been mailed to the United States Attorney for the Eastern District of New York.

Nathan Silbermann

